IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1280 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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TOURISM CORPORATION OF GUJARAT - Petitioner(s)
Versus
COMPOSITE HOTELS LTD. & 1 - Respondent(s)

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Appearance :
MR UNMESH SHUKLA with MR MANAV A MEHTA for Petitioner(s) : 1,
MR YF MEHTA for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/08/2007

ORAL JUDGMENT

1. The petitioner – Tourism Corporation of Gujarat has filed this petition under

Articles 226 and 227 of the Constitution of India challenging the order passed by the learned City Civil Judge, Ahmedabad on 30.9.2002 below an application Ex.69 whereby the application was allowed and the parties were directed to select arbitrator within 10 days from the date of the said order.

2. Brief facts giving rise to the present petition are that the respondent No.1 has instituted Civil Suit No.1794 of 1997 in the City Civil Court, Ahmedabad and took out a notice of motion. The petitioner resisted the application for injunction by filing the reply Ex.20. Thereafter, respondent No.1 moved an application Ex.32 on 24.12.1997 under Section 8 of the Arbitration and Conciliation Act, 1996 seeking to refer the parties to arbitration. The learned City Civil Judge, Ahmedabad rejected applications Ex.5 and 32 by common order dated 12.8.1998. The respondent No.1 has challenged the order

passed below an application Ex.5. So far as the order passed below Ex.32 is concerned, the same has become final. This Court while disposing of the Appeal From Order No.493 of 1998 on 28.9.2001 has observed that having regard to the peculiar facts and circumstances of the case, it was agreed by the learned counsel for the parties that the Trial Court be directed to decide the Civil Suit No.1794 of 1997 as early as possible. Accordingly, without going into the legality and validity of the said order passed by the learned Judge, the Trial Court was directed to expedite the hearing of Civil Suit No.1794 of 1997 and the suit was ordered to be decided, not later than 30.9.2002. The Court has also expressed hope that the parties to cooperate fully in disposal of the suit.

3. Thereafter, an application Ex.69 was moved by the respondent No.1 before the Trial Court on 30.9.2002. In the said application it was

contended that the entire suit was based upon the lease agreement executed by and between the parties and the said agreement contains arbitration clause. It is also averred in the said application that at the time of hearing of Ex.5 the submission was made on behalf of the plaintiff to refer to the parties to the arbitration. However, it was opposed by the present petitioner – defendant No.1 and thereafter there were major amendments in the procedural law as well as the legal position with regard to Sections 5, 7 and 8 of the Arbitration and Conciliation Act, 1996. The reference was made in the said application to the decision of the Hon'ble Supreme Court in the case of P. Anand Gajapathi Raju and others Vs. PVG Raju and others, reported in (2000)4 SCC page-539. Reference was also made to the amendments in Civil Procedure Code with special reference to Order 10 Rule 1A and Section 89 of the Civil Procedure Code. It was urged that the

dispute can be resolved through the alternate dispute resolution system and therefore prayer was made in the application to direct the parties to go for the arbitration.

4. The learned City Civil Court, Ahmedabad on the same day i.e. 30.9.2002 disposed of the said application, despite the fact that the time was sought for on behalf of the present petitioner. The suit was disposed of on the same day i.e. 30.9.2002 by directing the parties to select the arbitrator within 10 days. It is this order which is under challenge in the present petition.

5. Mr.Unmesh Shukla with Manav Mehta, learned advocate for the petitioner, has submitted that the question regarding the dispute to be referred to the arbitrator has been finalised while disposing of the applications below Ex.5 and 32 and in para-10 of the order learned City Civil Judge has clearly observed

that it is not possible to refer the disputes to the arbitration under the provisions of Section 8 of the Arbitration Act, 1996 and application therefore cannot be entertained and the same was rejected. This finding by the learned trial Judge has become final. It has not been challenged by way of Appeal From Order before this Court, despite the fact that the common order passed by the learned trial Judge below Ex.5 and 32 applications was challenged only to the extent of the order passed below Ex.5 before this Court, whereby the injunction was refused by the trial Court. Even on disposal of the Appeal From Order by this Court the parties have agreed to proceed with the suit and to get the suit disposed of on or before 30.9.2002. Though the said order was passed on 28.9.2001, for one year nothing has happened and only on 30.9.2002 an application was moved by the respondent No.1 to refer the dispute to arbitrator. The Court is of the

view that this application is made only with a view to cause delay in further proceeding and the trial Court has entertained the said application so as to show that the directions issued by this Court on 28.9.2001, have been complied with.

6. Even otherwise, if this application is moved by the respondent No.1 keeping in mind the change in the Civil Procedure Code and subsequent amendments, in that case also, without providing adequate opportunity to the petitioner the learned City Civil Judge, Ahmedabad should not have disposed of the said application.

7. Mr. Y.F. Mehta, learned advocate for the respondent No.1 has submitted that the present petitioner has issued notice to the respondent No.1 through its advocate on 24.11.2002 wherein also prayer to refer the dispute to arbitrator is made and hence the

petitioner should not have raised any grievance against the order passed by the learned trial Judge referring the dispute to arbitrator. He has further submitted that the order cannot be said to have been passed without jurisdiction or in violation of principle of natural justice and the petition therefore be dismissed.

8. Having heard learned advocates for the respective parties and having gone through the impugned order and the submissions made on behalf of the parties, the Court is of the view that the impugned order cannot be sustained. First of all, the issue was concluded in the earlier proceeding and directions were issued to dispose of the suit on or before 30.9.2002. Secondly, the parties have also agreed to proceed with the suit and there was no question of moving an application to refer the dispute to the arbitrator. In obvious disregard to the

directions, an application was surreptitiously moved. It was disposed of by the learned trial Judge on the same day without affording any opportunity to the present petitioner. The impugned order is, therefore, not in consonance with the direction issued by this Court and it is also violative of the principle of natural justice. Therefore, the order deserves to be quashed and set aside. It is accordingly quashed and set aside.

9. It is, however, open for any party to move an application for referring the dispute to the arbitrator and after hearing the other party and providing an adequate opportunity, the matter may be referred to the arbitrator. In absence of any agreement between the parties, the suit shall be disposed of on or before 31.1.2008.

10. Subject to the aforesaid directions and

observations this petition is accordingly allowed. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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